

United States 5
Circuit Court of Appeals
For the Ninth Circuit.

ISIDORE WINKLEMAN, alleged bankrupt,
Appellant,

vs.

T. OGAMI, MESAL BAG COMPANY, PORT-
LAND BAG and METAL COMPANY and
ENKE'S CITY DYE WORKS, INC.,
Appellees.

Transcript of Record

Upon Appeal from the District Court of the United
States for the District of Oregon.

FILED

JUN - 3 1941

PAUL P. O'BRIEN,

United States
Circuit Court of Appeals
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

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Attorney for Appellees

In the District Court of the United States
For the District of Oregon

No. B 24917

In the Matter of

ISIDORE WINKLEMAN,

Alleged Bankrupt.

AGREED STATEMENT OF CASE UNDER
RULE 76, RULES OF CIVIL PROCEDURE

On May 18, 1940, an involuntary petition in bankruptcy was filed in the above-entitled court against the above named alleged bankrupt. Said petition had only one petitioning creditor, T. Ogami, and averred that the alleged bankrupt had creditors less than twelve in number. The alleged bankrupt filed an answer to the creditor's petition, setting out in conformance with the statute, the names of all of his creditors. Whereupon there was filed petitions in intervention by Portland Bag & Metal Company and Messel Bag Co., two creditors of the alleged bankrupt. The intervening petitioning creditors in their respective petitions alleged the same acts of bankruptcy as were alleged in the original petition.

The alleged bankrupt having filed his answer to the intervening petitions, the cause came on for pre-trial, at which time the alleged bankrupt, with leave of court, amended by interlineation his answers to the original petition and the intervening

petitions to provide, "That the petitioning creditor and the intervening petitioning creditors, and each of them, have received preferences which they have not returned or offered to return in their petitions".

Prior to the continued hearing upon the pre-trial, Enke's City Dye Works Inc., a creditor of the alleged bankrupt, filed its petition in intervention, setting forth the same acts of bankruptcy alleged in the original petition and the intervening petitions of the Messel Bag Co., and Portland Bag & Metal Company.

The issues, in accordance with the pre-trial order, were:

(1) Whether or not the respective claims of T. Ogami, Messel Bag Co., and Portland Bag & Metal Company, petitioning creditors and intervening petitioning creditors in this cause, are provable claims under the Acts of Congress relating to bankruptcy, and whether or not said creditors, or any of them, have received preferences and have not offered to return same.

(2) Whether or not the Acts of Bankruptcy as alleged in the petition in this cause constitute acts of bankruptcy within the purview of the Acts of Congress relating to bankruptcy.

At the trial of this cause a stipulation was made between the parties admitting the provability of the claim of Enke City Dye Works, one of the intervening petitioning creditors, and that said creditor was qualified under the provisions of the

statute to join in the petition as a petitioning creditor. No evidence was offered to support the claim of Messel Bag Company, one of the intervening petitioning creditors. Evidence was offered in support of the alleged bankrupt's claim that T. Ogami and the Portland Bag & Metal Company, petitioning creditor and intervening creditor received preferences and failed to offer to return them.

The trial court rendered its opinion and found that whether the petitioning creditors and intervening creditor had received preferences and had failed to offer to return them was not an issue in the cause, and accordingly it did not consider evidence offered in support thereof. It found further that the allegations contained in the original petition and the intervening petitions of Portland Bag & Metal Company and Enke City Dye Works had been proven and based thereon made its order of adjudication on March 5, 1941, a copy of which order is attached hereto as Exhibit A.

Notice of appeal was served upon the attorney for the petitioning creditors and filed with the Clerk of the United States District Court for the District of Oregon on April 4, 1941, a copy of said notice of appeal as filed is hereto attached and marked Exhibit B.

The appellant (alleged bankrupt) upon the appeal will contend:

(1) That the court erred in failing to consider and determine whether T. Ogami and the Portland Bag & Metal Company, petitioning creditor and intervening creditor received preferences and offered to return them.

(2) The court erred in its conclusion that a preferred creditor may be a petitioning creditor of an involuntary petition in bankruptcy without returning or offering to return the preference received by said creditor in its petition.

The parties hereto agree that the foregoing statement of the case may be considered by the appellate court as an agreed statement of the case in the within cause, and essential to a decision of the questions and points arising upon the appeal herein.

WILLIS WEST,

Attorney for Original and
Petitioning Creditors.

MOE M. TONKON,

Attorney for Alleged Bank-
rupt.

Dated at Portland, Oregon, this 5th day of May,
1941.

EXHIBIT A

District Court of the United States
for the

..... District of Oregon
——— Division

Bankruptcy File No. B-24917

In the Matter of

ISIDORE WINKLEMAN

Bankrupt.

ADJUDICATION OF BANKRUPTCY.

At Portland, in said district, on the 5th day of March, 1941.

The petition of T. Ogami, filed on May 18, 1940, Mesal Bag Company, and Portland Bag and Metal Company, filed on September 23, 1940, and Enke's City Dye Works, Inc., filed on December 18, 1940 that Isidore Winkleman be adjudged a bankrupt under the act of Congress relating to bankruptcy, having been heard and duly considered;

It is adjudged that the said Isidore Winkleman is a bankrupt under the act of Congress relating to bankruptcy.

CLAUDE McCOLLOCH,
District Judge.

[Endorsed]: Filed March 6, 1941. G. H. Marsh,
Clerk. L. S. Rogers, Deputy.

EXHIBIT B

In the District Court of the United States
For the District of Oregon

No. B 24917

In the Matter of

ISIDORE WINKLEMAN,

Alleged Bankrupt.

NOTICE OF APPEAL

Comes now Isidore Winkleman, alleged bankrupt herein, and gives notice that he appeals to the United States Circuit Court of Appeals for the Ninth Circuit from that certain order of adjudication and the whole thereof, duly made and entered in the above entitled cause by the Honorable Claude McColloch, Judge of the United States District Court for the District of Oregon, on March 5, 1941.

(Sgd) MOE M. TONKON,

Attorney for Isidore Winkleman,
Alleged Bankrupt.

Due service of the within Notice of Appeal is hereby accepted this 4th day of March, 1941, by receiving a copy thereof, duly certified to as such by Moe M. Tonkon, attorney for Alleged Bankrupt.

(Sgd) WILLIS WEST,

Attorney for Petitioning and
Intervening Creditors.

[Endorsed]: Filed April 4, 1941. G. H. Marsh,
Clerk. By L. S. Rogers, Deputy.

The foregoing statement of the case is a true and correct statement of a sufficient portion of the pleadings, evidence and proceedings in the within cause to fully present to the appellate court the questions and points raised on the appeal herein.

Dated at Portland, Oregon, this 6th day of May, 1941.

CLAUDE McCOLLOCH,
District Judge.

[Endorsed]: Filed May 6, 1941. G. H. Marsh, Clerk. By L. S. Rogers, Deputy.

United States of America,
District of Oregon—ss.

I, G. H. Marsh, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing copy of Agreed Statement of Case under Rule 76, Rules of Civil Procedure, in Cause No. B24917, in the Matter of Isidore Winkleman, Alleged Bankrupt, has been by me compared with the original thereof, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Portland, in said District, this 7th day of May, 1941.

[Seal] G. H. MARSH,

Clerk,

By L. S. ROGERS,

Deputy Clerk.

[Endorsed]: No. 9817. United States Circuit Court of Appeals for the Ninth Circuit. Isidore Winkleman, alleged bankrupt, Appellant, vs. T. Ogami, Mesal Bag Company, Portland Bag and Metal Company and Enke's City Dye Works, Inc., Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed May 10, 1941.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 9817

In the Matter of

ISIDORE WINKLEMAN,

Alleged Bankrupt.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY UPON
APPEAL AND DESIGNATION OF PARTS
OF RECORD TO BE USED IN CONSID-
ERATION THEREOF.

Comes now Isidore Winkleman, appellant herein, and respectfully represents to this Honorable Court

that he intends to rely upon the following points upon the appeal herein:

(1) That the District Court erred in failing to consider and determine whether T. Ogami and the Portland Bag & Metal Company, petitioning creditor and intervening creditor received preferences and offered to return them.

(2) The District Court erred in its conclusion that a preferred creditor may be one of the petitioning creditors in an involuntary petition in bankruptcy without returning or offering to return the preference received by said creditor in its petition.

In support of the foregoing points upon which appellant intends to rely upon on the appeal herein, the court is respectfully referred to the Agreed Statement of Case under Rule 76, Rules of Civil Procedure, duly agreed to by the parties hereto and certified to by the Honorable Claude McColloch, United States District Judge for the District of Oregon, and filed in the within cause.

MOE M. TONKON,
Attorney for Appellant.

Dated at Portland, Oregon this 13th day of May, 1941.

State of Oregon,
County of Multnomah—ss.

Due service of the within Statement of Points upon which Appellant intends to rely upon appeal is hereby accepted in Multnomah County, Oregon, this 13th day of May, 1941, by receiving a copy thereof, duly certified to as such by Moe M. Tonkon, attorney for alleged bankrupt.

WILLIS WEST,
Attorney for Petitioning and
Intervening Creditors.

[Endorsed]: Filed May 15, 1941. Paul P.
O'Brien, Clerk.

